

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY 608 D.C.

05 DEC -7 PM 5:16

THOMAS H. GOULD  
CLERK, U.S. DISTRICT COURT  
W/D OF TN, MEMPHIS

PHIL HANNAH,

Plaintiff,

vs.

AMERICAN REPUBLIC INSURANCE CO.,

Defendant.

No. 04-2897-BV

ORDER DENYING WITHOUT PREJUDICE PLAINTIFF'S MOTION TO STRIKE

Before the court is the October 14, 2005 motion of the defendant, American Republic Insurance Co., to strike the following items from the record: (1) the documents that the plaintiff filed in support of his motion for summary judgment; (2) the plaintiff's statement of material facts accompanying the motion for summary judgment;<sup>1</sup> and (3) the plaintiff's motion and supporting memorandum to supplement the administrative record.<sup>2</sup> The motion was referred to the United States Magistrate Judge for determination.

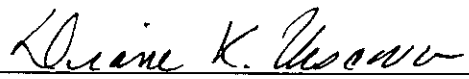
<sup>1</sup> The defendant has filed a response to the plaintiff's motion for summary judgment but did not admit or deny the plaintiff's statement of material facts on the grounds that summary judgment procedures are not applicable in ERISA benefit denial claims.

<sup>2</sup> This issue is moot. The court denied the plaintiff's motion to supplement the administrative record by order dated September 22, 2005.

American Republic Insurance Co. has failed to file a certificate of consultation with counsel for the opposing party as required by Local Rule 7.2(a)(1)(B). All non-dispositive motions must be accompanied by a certificate of counsel affirming that "after consultation between the parties to the controversy, they are unable to reach an accord as to all issues or that all other parties are in agreement with the action requested by the motion." *Id.* Local Rule 7.2(a)(1)(B) further provides that failure to file the certificate "may be deemed good grounds for denying the motion." The disputes presented here in these motions are particularly suitable for resolution through the consultation process before seeking court-ordered relief.

Therefore, the defendant's motion to compel is denied, without prejudice, for failure to file a certificate of consultation as required Local Rule 7.2(a)(1)(B). The court realizes that consultation may be difficult at this time because of the death of the plaintiff and the fact that no other person has been substituted as a plaintiff. If, after substitution of a party plaintiff and consultation with the substituted plaintiff, the parties are unable to resolve the issues in this motion, the defendant may renew the motion.

IT IS SO ORDERED this 7th day of December, 2005.

  
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DIANE K. VESCOVO  
UNITED STATES MAGISTRATE JUDGE



## Notice of Distribution

This notice confirms a copy of the document docketed as number 63 in case 2:04-CV-02897 was distributed by fax, mail, or direct printing on December 8, 2005 to the parties listed.

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Honorable J. Breen  
US DISTRICT COURT